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FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-447

WILLIAM G. MILLIKEN, *et al.*,

Petitioners,

—against—

RONALD G. BRADLEY, *et al.*,

Respondents.

BRIEF *AMICI CURIAE* OF ASPIRA OF AMERICA, INC., AND LATIN AMERICANS FOR SERVICE AND ECONOMIC DEVELOPMENT, INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Table of Authorities Cited

Table of Authorities Cited

Pages

Table of Authorities Cited

Pages

Table of Authorities Cited

Statutes

Texts

Table of Authorities Cited

INTERESTS OF AMICI

The Puerto Rican Legal Defense & Education Fund, the Mexican-American Legal Defense & Educational Fund, and the Center for Law & Education have obtained the consent of the parties in this case to the filing of this brief amici curiae[1] on behalf of their clients Aspira of America, Inc. ("Aspira") and Latin Americans for Service and Economic Development, Inc. ("LASED").

Aspira is a not-for-profit corporation organized under the laws of New York. Its primary purpose is to develop the intellectual and creative capacities of Puerto Ricans in the United States and Puerto Rico. As part of its overall efforts, Aspira seeks to establish and expand programs to improve educational opportunities for Puerto Ricans.

LASED is a not-for-profit corporation organized under the laws of Michigan. It provides a multitude of services to Detroit's Hispanic communities, including programs to improve educational opportunities. Members of LASED have served on the Detroit Board of Education's Superintendent's Advisory Committee on Desegregation, which reviews implementation of those educa-

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[1] The letters of consent have been filed with the Clerk of the Court.

tion components of the Detroit desegregation plan that are not under challenge. Additionally, LASED has actively monitored the activities of the Court Advisory Committee on Desegregation to insure that the unchallenged educational components of the desegregation plan are implemented.

Because of their active involvement in improving educational opportunity for Hispanic students, both Aspira and LASED have a continuing interest in assuring that the desegregation plan for Detroit will include compensatory education programs found necessary by the local school board and the local federal court to remedy the present effects of past discrimination.

QUESTION PRESENTED

Whether the district court, upon finding intentional and systematic de jure school segregation, properly included in its remedial decree certain compensatory educational programs which were endorsed and for the most part even proposed by local school officials,and which the court found necessary to desegregate the Detroit schools effectively.

STATEMENT OF FACTS

(a) Introduction

For nearly two decades, the State of

Michigan[2] has substantially contributed to the establishment and maintenance of intentional and massive de jure segregation in the Detroit public schools. After extensive hearings, the district court found that the state's discriminatory practices were significant, pervasive, and responsible in part for the segregation that exists in the Detroit school system. 338 F. Supp. 582, 592. The Sixth Circuit Court of Appeals held those findings supported by ample evidence. 484 F.2d 215, 241. This Court, without disturbing the fact finding of the district court, remanded the case for "prompt formulation of a decree directed to eliminating the segregation found to exist in Detroit city schools, a remedy which has been delayed since 1970." Milliken v. Bradley, 418 U.S. 717, 753 (1974) (Milliken I).

At the hearings on remand, Detroit's Board of Education (the "local board") submitted a desegregation plan which included the following three educational components: in-service training for teachers, non-discriminatory student testing procedures, and counselling and career guidance programs. The state not only endorsed the in-service

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2 References to the state are to be read as references to the state public officials named as defendants. Milliken v. Bradley, 418 U.S. 717, 721 (1974).

teacher training and guidance and counselling programs but argued that they "deserve[d] special emphasis." 402 F. Supp. 1096, 1118. The remaining educational component challenged by the state is the remedial reading program. Although this program was not originally proposed by the local board, the local board has argued in this Court and in the Sixth Circuit that the reading program is necessary to remedy the effects of segregation upon Detroit's school children. 540 F.2d 229, 241.

This Court must now decide the limited issue of whether the district court, after extensive hearings and on the basis of ample record evidence, exceeded its authority in ordering the compensatory educational programs that were agreed to and for the most part proposed by the local school board.[3]

(b) Findings Below

After lengthy hearings, the district court found that the various remedial pro-

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3 A second issue in this case is whether the state, once found to have contributed substantially to the massive and systematic de jure segregation in Detroit's public schools, could properly be ordered to share in the cost of implementing the educational components of the desegregation plan. This issue is not discussed by amici because they do not have a unique interest in the question of the appropriate governmental funding source for the educational components of the desegregation plan.

grams now under challenge were necessary "to restore quality education which had deteriorated due to past acts of discrimination." 402 F. Supp. at 1133. The court stated:

> We approve the Board's view that the [desegregation] plan must include educational components allowing for further desegregation and assuring a successful desegregative effort. Id. at 1126.

Each of the remedial measures directed by the district court was premised on a specific finding of its necessity to the goal of desegregation.

(1) Specifically, as to reading and communication skills, testimony established that the reading program ordered was an important step in facilitating desegregation (A56). The district court, relying on the record (A7-8, A12-13, A55-57, A61, A80-81, A92, A99-101; Record, Vol. XXII, 44-45; Vol. XIX, 37-38)[4] and the informed views of

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4 The following method of citation is used here to refer to portions of the transcript of the proceedings in the district court:

i) Portions of the record reproduced in the appendix are cited "A" followed by the page number, e.g. (A12); and

ii) Other portions of the record are cited by the volume followed by the page number, e.g. (Record, Vol. XIX, 44-45).

educational authorities, found that compensatory reading programs were a prerequisite to assuring students' ability to learn in substantive courses because the students had been deprived of comparable foundation skills learning earlier in their education. The court stated:

> There is no educational component more directly associated with the process of desegregation than reading....To eradicate the effects of past discrimination, a remedial reading program should be instituted immediately to correct the deficiencies of those mid-way in their educational experience. 402 F. Supp. at 1138-39.

(2) In-service training gives teachers "an improved understanding of race, of race relations, [and] of racial understanding.. .." (A41). It informs the teachers of "the importance of dealing with all children fairly, equally, even handedly..." (A40), for when white and black children are first placed together in a classroom "certain kinds of problems surface that are unlike those that existed before" (A33). Thus, on the basis of the full record, (A7-8, A12-13, A33, A38, A40-41, A54, A80-82, A86-87, A89-90, A92-94; Record, Vol. XXX at 116; Vol. XII at 142; Vol. XIX, at 92-93), the district court stated:

> A comprehensive in-service training program is essential to a system undergoing desegregation. A conversion to a unitary system cannot be successful absent an in-service

> training program for all teachers and staff....[to] ensure that all students are treated equally in the educational process. 402 F. Supp. at 1139.

(3) Non-discriminatory testing insures that resegregation will be avoided. Stuart Rankin, Assistant Superintendent for Research, Planning and Evaluation for the Detroit School system, testified, "One of the most important things to guarantee is that having desegregated the school, we don't resegregate the classes within the school through homogeneous grouping or other techniques that have been used over the ages in education for grouping youngsters." (A39) The district court found:

> Of great importance to a system undergoing desegregation is the assurance that tests administered to students are free from racial, ethnic and cultural bias. Black children are especially affected by biased testing procedures.... [T]he discriminatory use of test results can cause resegregation ....[The defendants] are constitutionally mandated to eliminate all vestiges of discrimination, including discrimination through improper testing. 402 F. Supp. at 1142.

(4) Counselling and career guidance programs assure that discrimination in the relations between counselors and students is eliminated (A34), thus facilitating the adjustment process students necessarily

undergo when assigned to new schools (A62). On the basis of record evidence, the court concluded (A7-8, A12-13, A30-31, A34-35, A51-53, A55, A59-60, A62-63, A80-81, A88, A94-95; Record, Vol. XXIII-A at 86, 128 and 151; Vol. XXX at 129):

> School districts undergoing desegregation inevitably place psychological pressures upon the students affected. Counselors are essential to provide solutions to the many problems.... [and]...the success of the vocational and technical schools created herein [by the desegregation plan] depends upon the efforts of counselors whose guidance is essential to students seeking a career. 402 F. Supp. at 1143.

The Court of Appeals for the Sixth Circuit found the district court's findings of fact as to the educational components "not clearly erroneous, but to the contrary [they are] supported by ample evidence." 540 F.2d at 241. The Court of Appeals continued:

> The need for in-service training of the educational staff and development of non-discriminatory testing is obvious. The former is needed to insure that the teachers and administrators will be able to work effectively in a desegregated environment. The latter is needed to insure that students

> are not evaluated unequally because of built-in bias in the tests administered in formerly segregated schools.
>
> We agree with the District Court that the reading and counselling programs are essential to the effort to combat the effects of segregation.
>
> Without the reading and counselling components, black students might be deprived of the motivation and achievement levels which the desegregation remedy is designed to accomplish.
>
> [W]e conclude that the findings of the District Court as to the Educational Components are supported by the record. 540 F.2d at 241.

ARGUMENT

THE DISTRICT COURT'S EQUITABLE REMEDIAL POWER INCLUDED THE AUTHORITY TO ORDER IMPLEMENTATION OF A DESEGREGATION PLAN WHICH CONTAINED EDUCATIONAL COMPONENTS THAT WERE EITHER PROPOSED OR APPROVED BY THE LOCAL SCHOOL AUTHORITIES AND WERE SUPPORTED BY AMPLE EVIDENCE AS BEING NECESSARY TO DESEGREGATE DETROIT'S PUBLIC SCHOOLS EFFECTIVELY

The district court found on the evidence (see pages 4-8, ante) that the programs proposed by the local school board were necessary to desegregate Detroit's public schools effectively. This Court's reviewing function is limited to scrutinizing the record for sufficient factual support for the scope, the reasonableness and the feasibility of the remedy. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 31 (1971). This narrow standard of review is grounded in this Court's consistent reliance upon the informed judgment of the lower federal courts to determine appropriate remedial measures for eliminating school segregation and its effects. Brown v. Board of Education, 349 U.S. 294, 299 (1955) (Brown II); Green v. School Board of New Kent County, 391 U.S. 430, 439 (1968).

The issue in this case is a limited one. Because the plan adopted by the district court was almost entirely generated and urged upon the court by the local school authorities, it is not necessary for this Court to determine when and to what extent a district court may reject a remedial plan proposed by a local school district and supplant it with a plan forged by the court. The court below scrupulously adhered to this Court's directive to place "primary responsibility" upon local school authorities for "elucidating, assessing and solving" local school problems in eliminating unlawful segregation. Brown II, supra, 349 U.S. at 299; Swann, supra, 402 U.S. at 12; United States v. Montgomery County Board of Education, 395 U.S. 225, 226 (1969). It properly focused on whether the plan put forth by the local school board promised immediately and effectively to disestablish the dual school system, Green, supra, 391 U.S. at 439, and refrained from substituting its own judgment for that of the school board as to what remedial measures were necessary and appropriate. Swann, supra, 402 U.S. at 16; cf. San Antonio School District v. Rodriguez, 411 U.S. 1, 42 (1973). Likewise, it is not necessary for the Court to determine under what circumstances a desegregation plan might be required to contain remedial educational components.

The district court's authority to approve the remedial educational components proposed by the local school board

is rooted in Brown v. Board of Education, 347 U.S. 483 (1954) (Brown I). Brown I made clear that deprivation of equal educational opportunity is inherent in segregated schooling. Id. at 493. Segregation, the court observed, denotes inferiority, which affects the motivation of minority children to learn. Id. at 494. Summarizing its findings, the court stated:

> Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. Id. at 494.

To fulfill the promise of Brown I to eliminate racial discrimination and its effects from public education, school officials can be required to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch," Green, supra, 391 U.S. at 437-38 and "to eliminate from the public schools all vestiges of state-imposed segregation." Swann, supra, 402 U.S. at 15. Accord, Keyes v. School District No. 1, 413 U.S. 189, 200 (1973); Wright v. Council City of Emporia, 407 U.S. 451, 463 (1972).

The desegregation plan the court adopted was designed to "counteract the continuing effects of past school segregation.. ..," Swann, supra, 402 U.S. at 28; "to eliminate the effects of past discrimination...."

Green, supra, 391 U.S. at 438 n. 4, quoting from Louisiana v. United States, 380 U.S. 145, 154 (1965); and to preclude resegregation, Monroe v. Board of Commissioners, 391 U.S. 450, 459 (1968). In fashioning such relief, this Court has repeatedly stated, the district court has broad power to tailor the remedy to the particular circumstances presented so as to ensure its effectiveness. Hills v. Gautreaux, ___U.S.___, 44 U.S.L.W. 4480, 4487 (1976); Milliken I, supra, 418 U.S. at 737-738; Davis v. Board of School Commissioners, 402 U.S. 33, 37 (1971); Swann, supra, 402 U.S. at 15-16, 25; Brown II, supra, 349 U.S. at 300.[5] What the district court did in this case was to order a remedy eliminating not only the roots of segregation (student assignment practices), but also its branches--the adverse educational consequences.

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5 This Court's decisions in Pasadena City Board of Education v. Spangler, ___U.S.___, 49 L.Ed. 2d 599 (1976) and Milliken I, supra, are not to the contrary. According to Milliken I, a district court may not subject to its remedial power separate school districts not shown to have committed racially discriminatory acts. Under Pasadena, once a dual school system is dismantled, the district courts have no authority annually to readjust attendance zones in order to achieve a preferable student racial mix. Id. at 607-08. Neither Milliken I nor Pasadena prohibits the district court from initially approving educational components which are part of a desegregation plan proferred by the local school officials and are found

Segregative student assignment practices have characterized the Detroit school system continuously since 1950. Bradley v. Milliken, 338 F. Supp. 582, 587-89 (E.D. Mich. 1971). The unequal educational opportunity inherent in that segregated schooling has been the lot of Detroit school children for many years. In fashioning a remedy remedy for the injury, the district court properly concerned itself with making its student assignment plan effective and meaningful. To do this, it ordered measures that it found necessary to compensate for previous deprivations imposed by that segregated school system.

Other district courts, recognizing the need to attend to years of unequal education imposed by segregative student assignment practices, have also fashioned remedies that included more than the simple elimination of the segregative student assignment practices. This Court has left such remedial orders undisturbed when they have included measures necessary to establish a unitary school system free from the effects of racial segregation. These holdings were soundly grounded not only in established remedial principles, but also in academic and field studies which document the necessity for remedial measures, such as those involved in this case, to undo the effects of past discrimination and to aid

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5 Cont'd
necessary effectively to remedy unlawful segregation.

in desegregation.[6]

For example, in Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1976), aff'd, 530 F.2d 401 (1st Cir.), cert. denied, ___ U.S. ___, 44 U.S.L.W. 3719 (1976), the district court ordered the implementation of a desegregation plan calling for a dramatically different educational system involving a "multiplicity of measures," 401 F. Supp. at 234, beyond the mechanical distribution of students. These measures included magnet school programs, the involvement of colleges and universities in developing adequate educational programs, and the creationof parent and student advisory councils. The basis for

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See, for example, United States Commission on Civil Rights, Desegregation of the Nation's Public Schools, August, 1976; Forehand and Ragosta, A Handbook for Integrated Schooling, July, 1976 (United States Office of Education); Orfield, "How To Make Desegregation Work: The Adaptation of Schools To Their Newly-Integrated Student Bodies," 39 Law and Contemporary Problems 314 (1975); United States Commission on Civil Rights, School Desegregation in Ten Communities, June, 1973 (Clearinghouse Publication 43); Preparing for School Desegregation: A Training Program For Intergroup Education, June, 1972 (Information Dissemination Module, Western Regional School Desegregation Projects, University of California); United States Department of Health, Education and Welfare, Planning Educational Change, Integrating the Desegregated School, 1970, (Vol. III); United States Department of Health, Education and Welfare, Planning Edu-

this decree was a history of segregative student and faculty assignment practices which intentionally established and maintained a dual school system in Boston. Morgan v. Hennigan, 379 F. Supp. 410, 482 (D. Mass.), aff'd sub nom. Morgan v. Kerrigan, 509 F.2d 580 (1st Cir. 1974), cert. denied, 421 U.S. 963 (1975). The district court grounded its authority for ordering implementation of the plan in the remedial principles set forth in Brown II, Milliken I, Davis, Swann, and Green, stating:

> The simplicity of the requirement that affirmative acts of discrimination must end does not, however, imply simplicity of enforcement. The consequences of years of segregative practices will be eradicated only with great effort and understanding... [H]elp that in other circumstances would be only desirable... becomes essential. 401 F. Supp. at 230-31.

To make the desegregation remedy effective necessitated not only banning active discrimination but also efforts to meet the special problems caused by "the persisting effects of past discrimination and the difficulties of transition, for both black and white students, from segregated to desegregated schooling." Id. at 234.

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6 Cont'd
cational Change, Human Resources in School Desegregation, 1969 (Vol. II); Board of Education of the City of New York, Planning for the Achievement of Quality Integrated Education, June, 1968.

In Oliver v. Kalamazoo Board of Education, 346 F. Supp. 766 (W.D. Mich.), aff'd, 448 F.2d 635 (6th Cir. 1971), the district court enjoined local school board members from setting aside a school desegregation plan adopted by a former board and from firing teachers and counsellors hired as part of the overall desegregation efforts of the former board. Recognizing the need for compensatory educational components in a desegregation plan (such as the hiring of counsellors and teachers especially trained for a newly desegregated school system), the district court stated:

> [A]s a result of the segregated conditions of the schools, black school children are educationally deprived, intellectually stifled, and academically and psychologically uninspired, 346 F. Supp. at 776.
>
> * * *
>
> The presence of black and white staff members sensitive to problems of communication between the races helps to free children's minds to learning by increasing their faith and confidence in the school as an institution and by diminishing the likelihood of racial tensions fostered by lack of understanding. Id. at 786.

See also, Oliver v. Kalamazoo Board of Education, 368 F. Supp. 143 (W.D. Mich. 1973), aff'd sub nom. Oliver v. Michigan State Board of Education, 508 F.2d 178 (6th Cir. 1974), cert. denied, 421 U.S. 963 (1975).

In United States v. Jefferson Board of Education, 372 F.2d 836 (5th Cir.), aff'd en banc, 380 F.2d 385 (5th Cir. 1966), cert. denied, 389 U.S. 840 (1967), the Fifth Circuit Court of Appeals, acknowledging that children in segregated schools suffer educational deprivation and psychological damage, included in the proposed desegregation decree appended to its opinion a provision for remedial education programs. 372 F.2d at 900. The court stated that the remedial programs were necessary to overcome past inadequacies of all black schools. For other examples of similar remedial orders, see United States v. Missouri, 388 F. Supp. 1058, 1062 (E.D. Mo.), aff'd, 523 F.2d 885, 887 (8th Cir. 1975) (ordering in-service teacher training, a bi-racial committee and community education); McNeal v. Tate County School District, 508 F.2d 1017 (5th Cir. 1975) (barring student assignment by ability groupings until the school system "has operated as a unitary system without such assignments for a sufficient period of time to assure that the underachievement of the slower groups is not due to yesterday's educational disparities." 508 F.2d at 1021); Arvizu v. Waco Independent School District, 373 F. Supp. 1264, 1279-80 (W.D. Tex. 1973), aff'd in part, rev'd as to other issues, 495 F.2d 499 (5th Cir. 1974) (ordering teacher hiring, a tri-ethnic committee, bilingual-bicultural programs, special education); Singleton v. Jackson Municipal Separate School District, 426 F.2d 1364, 1370 (5th Cir. 1970), cert. denied, 402 U.S. 944 (1971) (establishing a bi-racial committee to make reports to the district court and to recommend to the school board ways to establish and maintain

a unitary system); Smith v. St. Tammany Parish School Board, 302 F. Supp. 106, 110 (E.D. La. 1969), aff'd, 448 F.2d 414 (5th Cir. 1971)(requiring remedial educational programs and in-service teacher training); United States v. Texas, 447 F.2d 441, 448 (5th Cir. 1971)(requiring compensatory education programs); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), aff'd sub nom. Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969) (requiring compensatory education and abolishing the student tracking system based upon discriminatory testing); Plaquemines Parish School Board v. United States, 291 F. Supp. 841, 846 (E.D. La. 1967), aff'd as modified, 415 F.2d 817 (5th Cir. 1969) (finding the order requiring remedial educational programs "a proper exercise of the [district] court's discretion," 415 F.2d at 831.); Lee v. Macon County, 267 F. Supp. 458 (M.D. Ala.), aff'd per curiam sub nom. Wallace v. United States, 389 U.S. 215 (1967)(requiring remedial educational programs).

Congress, as well, has recognized that desegregation usually involves more than transferring students; its funding of remedial services, teacher training supportive services, and the like indicates that recognition. 20 U.S.C. §1606 (a).

In analyzing this issue of remedy, the state recognizes the correct starting point is the nature of the constitutional violation. Under the state's theory, however, the remedy in this case must be limited to correcting unlawful student assignment practices because the only constitutional violation found was unlawful pupil assign-

ment.[7] (Brief of Petitioners, pages 20-21.) But examining the nature of the constitutional violation found here, as in Brown I, in terms of the remedial principles set forth in Swann, Davis, and Green, wholly undermines the state's theory.

In support of its argument that the only permissible remedy is student reassignment, the state compares the desegregation plan adopted in this case with those adopted in other cases and found constitutionally sufficient even though they did not include educational components (Brief of Petitioners, p. 20). This comparison

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[7] To the extent that the defendant's standard is based on the concurring opinion of Chief Justice Burger and Justices Rehnquest and Powell in Austin Independent School.District v. United States, ___U.S. ___, 45 U.S.L.W. 3413 (December 7, 1976), that reliance is misplaced. The district court's order was entirely consistent with the reasoning of the Austin concurring opinion. Segregation in the Detroit school system, the court found, affected several of that system's educational programs. By proposing or at least agreeing to a desegregation plan that included compensatory educational components, the local school board, indeed the state, conceded as much. Inclusion of these components, therefore, did not "exceed the effect of the constitutional violation" and was "remedial rather than punitive." Id.

misses the mark because it ignores this Court's recognition that formulating an effective desegregation decree involves the resolution of "varied local school problems." Brown II, supra, 349 U.S. at 299. The exercise of discretion by one district court in particular factual circumstances, although instructive, is not intended to and cannot establish constitutional limits for another district court faced with other circumstances. Morgan v. Kerrigan, supra, 530 F.2d at 414 n. 17. Rather, those limits are prescribed by the standards set forth in the decisions of this Court discussed above, to which the district court carefully adhered.

Upon the facts presented, the district court's remedy did represent "every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." Davis v. Board of Commissioners, supra, 402 U.S. at 37. The district court found intentional, purposeful, and massive de jure segregation. It found not only segregative school zoning and student assignment practices. It also found school construction site selection which maintained and even increased school segregation. It found discriminatory feeder and busing practices, including intact busing. It found segregative optional attendance zones that affected a substantial portion of the students, schools and faculty within the Detroit school system. Further, the district court found that this intentional and purposeful action of local and state officials significantly contributed to segregation in a

substantial portion of the school system. Bradley v. Milliken, supra, 484 F.2d at 241.

Systemwide liability was thus clearly shown, Keyes v. School District No. 1, supra, 413 U.S. at 201, 214, and common sense indicates that proven discrimination pervaded the school system as a whole. Id. at 201. This discriminatory action, the district court concluded, produced the educational deprivation and psychological damage that are inherent in segregated schooling. Brown I, supra, 347 U.S. at 493-4. To remedy these direct consequences of intentional school segregation, the court ordered the compensatory programs recommended by local school authorities and supported by record evidence as necessary.

The scope of the remedy, therefore, did not exceed the proven violation. The state did not demonstrate that the programs were unrelated to or inconsistent with the requirement to eliminate segregation "root and branch." Likewise, the state did not succeed in showing that the remedial educational programs were unrelated to or inconsistent with the segregative conduct that the court found. The district court thus properly directed the implementation of the educational components of the desegregation plan.[8]

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8 The evidence in this case amply demonstrated the necessity of the approved programs resulting from de jure segregation. There is, therefore, no need for

It has been noted that "restoring the victims of unconstitutional segregation requires far more than eliminating the specific, demonstrable effects of proven discriminatory acts. Restoration is necessarily a complex and widespread process." Morgan v. Kerrigan, supra, 530 F.2d at 418 n. 23. Improved quality of education, for its own sake and apart from remedying the effects of illegal conduct, concededly is a general goal beyond the scope of a desegregation court's injunctive authority. Nothing the district court did here is inconsistent with that recognition. The local school board and the district court agreed that the specific educational programs were needed both to remedy the effects of past discrimination and to alleviate the problems inevitably encountered during a period of transition to

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8 Cont'd
the Court now to determine the extent to which a district court may approve or even compel compensatory educational components where the link between the proven violation and the proposed remedy is less apparently based on evidence in the record.

a unitary school system.[9] Including these programs seemed, to those closest to the problems, obviously necessary in a decree designed to unravel the effects of segregation. There is no basis, in fact or in law, for this Court to fault that conclusion.

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9 In other areas, this Court has sanctioned the exercise of equitable remedial power over activities broader than the specific ones that were the bases of the violation found. In Ford Motor Company v. United States, 405 U.S. 562 (1972), for example, the district court held that Ford's acquisition of a spark plug plant (Auto-lite) violated §7 of the Celler-Kefauver Antimerger Act. The district court's remedial decree required not only divestiture of the spark plug plant, but five other specific acts designed to restore a competitive market. 405 U.S. at 572. Among other things, the decree prevented Ford from manufacturing its own spark plugs, an undertaking which absent the unlawful purchase it would have been free to do. In refusing to upset the district court's decree, this Court noted that divestiture is a "start" toward restoring the pre-acquisition situation. 405 U.S. at 573. Comparably, in United States v. United Shoe Machinery Corp., 391 U.S. 244 (1968), a company found to have violated the Sherman Act was subject to a panoply of restrictions upon its business activities that was much more detailed and limiting than those imposed by the Sherman Act itself. See also, International Salt Co. v. United States, 332 U.S. 392 (1947).

CONCLUSION

For all the foregoing reasons, that part of the district court's order requiring the implementation of the educational components of the desegregation plan should be affirmed.

February 14, 1977

Respectfully submitted,

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